

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 16347 of Liberty Limited Partnership, pursuant to 11 DCMR 3107.2, for a variance from the use provisions of Paragraph 721.2(j) to allow a public indoor storage facility in a C-2-A District at premises 624-642 H Street, N.E. (Square 858, Lots 845, 846, 851, 853, 854 and 855).

HEARING DATE: September 2, 1998
DECISION DATE: September 2, 1998 (Bench decision)

ORDER

SUMMARY OF EVIDENCE:

Based on the evidence of record, the Board finds as follows:

1. The subject site, located at 624-642 H Street, N.E., is improved with a five-story 122,833 square foot concrete building, including a loading ramp, heavy-duty elevators, and a parking lot. The site is located on H Street, N.E. between 6th and 7th Streets, N.E. The building was constructed in 1952 and was designed for use as an automobile showroom and automobile storage. It was used later for taxicab storage. As such, it is a shell without interior renovations, without most utilities, and with low ceiling heights on the second, fourth and fifth floors. The structure is and has been mostly vacant, except for automobile parking on the first floor, for several years.
2. The storage facility's hours of operation would be 7 a.m. to 7 p.m. For security reasons, a resident manager would live on the premises. In addition, video cameras would be provided. The building would be renovated to resemble an office building. Clients would use the inside of the building for all storage-related activities, including load and unload.
3. Andrew Schaeffer, one of the owners (partners) of the subject property, testified that he had been unable to sell the subject property over the last 12 years. The only interest in the property other than for indoor storage was for special purpose use, such as a YMCA or a religious temple (mosque). In each case, the contract or deal "died" for lack of financing. Mr. Schaeffer also testified that there was absolutely no interest in purchasing or leasing the subject property for retail and/or office use, given the condition and location of the building. As a result, Liberty Limited Partnership has suffered significant financial losses for the past twelve 12 years.

4. Mr. Schaeffer testified, with picture exhibits, that many of the nearby store fronts on H Street, N.E. were for sale or lease, indicating the lack of a retail market for the subject property. Mr. Schaeffer provided pictures of boarded-up residential dwellings at the corner of 7th and H Streets, N.E. Mr. Schaeffer submitted a petition signed by 31 persons including business owners in the community who supported the variance.

5. James Darby, Associate Vice President for the Carey Winston Company, and the broker for the contract of sale of the subject testified that the costs to rehabilitate the building for retail/office use far outweighed the potential profit to be earned therefrom. In Mr. Darby's opinion, rehabilitation of the building is economically unfeasible.

6. James J. McCarthy, a representative of the potential purchaser, stated that the building is ideally situated to be used for indoor storage because of its large entrances on H Street, N.E., as well as the alley behind that provides for drive-through access for loading and unloading within the building. He testified that an indoor storage facility would serve the surrounding community, both in terms of residential and small business use. Approximately 25 percent of the facility's business would be local. Mr. McCarthy indicated that he intended to renovate the building into a first class storage facility including:

- Renovating the facade to resemble an office structure; and
- Providing multiple security systems, including high intensity lighting, especially for the alley portion abutting 7th Street, N.E.

Mr. McCarthy also testified that, pursuant to an agreement with surrounding community groups and several members of the Advisory Neighborhood Commission (ANC), his company would insure that:

- One community room would be provided on the first floor of the building for both ANC 6A and specifically designated members of a neighborhood crime "watch" group. The community groups would be able to use the space within a reasonable time after construction is completed on the building;
- At least 70 percent of the employees hired for the storage facility would be from the surrounding community;
- Large trucks (16 wheels or more) would only have access to the site from the alley to the rear of the building; and,
- No curb cuts or expansion of existing curbs would be needed.

Mr. McCarthy submitted two reports, one indicating no adverse traffic impact if the facility were converted to indoor storage, and one indicating the need for indoor storage in the vicinity. Mr. McCarthy stressed that the proposed storage facility would be beneficial for small business operations like plumbers and painters that needed storage space for their supplier and equipment.

6. Four ANC 6A Commissioners (Ms. Raglin and Messrs. Ferrell, Pernell and Fields) spoke and/or wrote letters in support of granting the use variance based on the need to renovate the subject building, employ community residents, and bring some “life” back to the H Street corridor. In addition, the Single Member District Commissioner for 6A08 (Ms. Orndorff) submitted a letter in support of the use variance prior to resigning from the position in August 1998.

7. The Reverend Louis B. Jones, II, Pastor of the nearby Pilgrim Baptist Church, at 700 I Street, N.E., testified in support of the use variance, so long as the facade was renovated. Reverend Jones indicated that the proposed renovation, combined with Murry’s Steaks at the corner of 6th and H Streets, N.E., and his proposed renovation of property at the corner of 7th and H streets, N.E., would solidify that entire block of H Street, N.E. and signal a rebirth of the H Street corridor.

8. The NearNorthEast Citizens Against Crime and Drugs submitted a letter in support of the use variance requested.

9. ANC 6A filed a letter with the Board on May 11, 1998, indicating that it had voted against supporting the use variance for lack of information. Thereafter, the owner invited the community to inspect the building on June 15, 1998 and met with the faith community to address its concerns. In addition, the owner and potential purchaser supplied additional information to the ANC and community members and twice attempted to meet with ANC 6A. However, no meeting was held due to lack of a quorum.

10. ANC 6A Commissioner James Schulman who testified in opposition to the use variance, also testified that ANC 6A was twice unable to form a quorum at the request of the owner/potential purchaser of the subject property to discuss the community amenities to be provided as set forth above by Mr. McCarthy. Mr. Schulman testified, however, that he polled both the Zoning and Planning Committee members of ANC 6A as well as all the members of ANC 6A, and a majority of those members in each instance supported the use variance. Mr. Schulman was unable to state, in response to a question raised by the Board, what other reasonable use could be made of the subject property.

11. Mr. Anwar Saleem, representing the H Street Merchants Association, testified in opposition to granting the use variance. Mr. Saleem indicated that because of the building’s high visibility along the H Street corridor, a better use could be made of it other than that of a public storage facility. The Board determined that the potential uses identified by Mr. Saleem were speculative, and that there were no definite plans for an alternative use of the premises.

12. Councilmember Sharon Ambrose submitted a letter in opposition to the granting of the use variance, based upon the prior position of the ANC and NearNorthEast Citizens Against Crime and Drugs, which as discussed above, has since changed in favor of the use variance.

FINDINGS OF FACT:

1. The subject property requiring a variance from the use provisions cannot reasonably be devoted to a use permitted in the C-2-A District as a matter-of-right for the following reasons:

- a. The building was constructed as a showroom/storage facility for automobiles in the early 1950's;
- b. The building is a shell with little or no utilities; and,
- c. The costs to rehabilitate the building far outweigh any potential rental income, especially in light of the low ceiling heights of three of the five floors, which adversely affect the installation of HVAC equipment and the ceiling height needed for occupants. The highest and best use of the subject property is for storage.

2. The owners have been unable to sell the property for any use, other than indoor storage, over the past 12 years.

3. The proposed indoor storage facility will not generate adverse parking and traffic impacts (which can be accommodated in the building or off-street on 7th Street, N.E. which is part of the subject site).

4. The proposed facade renovations to the building including high-density lighting will enhance the building and make it more compatible with existing and soon to be renovated buildings on H Street, N.E., between 6th and 7th Streets, N.E.

5. The proposed use will not impair the intent, purpose and integrity of the Zoning Regulations and map.

6. The Board notes that the potential purchaser has agreed with the community to provide the following:

- The facade of the building shall be renovated.
- At least 70 percent of the employees hired for the storage facility shall be from the surrounding community.

- One community room for use by both the ANC and specifically designated members of a neighborhood crime “watch” group, or by appropriate government officials shall be provided within a reasonable time after construction has been completed on the subject property.
- Large trucks (16 wheels or more) shall have access to the site only through the alley abutting the subject property on 7th Street, N.E.
- No curb cuts or expansion of existing curbs will be made.
- High-density lights will be used for lighting the exterior of the subject property especially the portion abutting the alley on 7th Street, N.E.

CONCLUSIONS OF LAW AND OPINION:

Based upon the foregoing summary of evidence and findings of fact, the Board concludes that the applicant is seeking a variance from the use provisions of Sec. 721.2(j) of the Zoning Regulations.

The Board concludes that the applicant has met its burden of proof. The building which is the subject of this application was constructed in 1952 as a shell for automobile storage use. For the past 40 years, the building has been used solely for automobile, cab and public parking storage facilities, or has been vacant. The building cannot be used for matter-of-right uses, because of its shell condition.

Based on the uniqueness of the site, the Board finds that strict application of the Zoning Regulations would create an undue hardship on the applicant. The Board concludes that the variance relief requested will not have an adverse impact on the neighborhood in terms of parking, traffic, or other objectionable conditions.


Based upon the record before the Board, the Board concludes that the applicant has met the burden of proof, pursuant to 11 DCMR 3107.2, that there exists an exceptional or extraordinary situation or condition related to the property which creates an undue hardship for the owners in complying with the Zoning Regulations, that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the Zoning Regulations and Map, and that the proposed use will not adversely affect surrounding uses or the zone plan for the area.

Members of Advisory Neighborhood Commission 6A submitted letters and testified both for and against the application. In addition, the Chairperson filed a letter dated May 11, 1998 on behalf of the ANC. The Board considered the testimony and reports of the ANC members; however, could not give “great weight” to the ANC because its report did not follow the procedures as outlined in Section 3307 of the Zoning Regulations.

It is hereby **ORDERED** that the application be **GRANTED**.

VOTE: **3-0** (Betty King, Anthony Hood, and Sheila Cross Reid to grant)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY: 
Sheri M. Pruitt-Williams
Interim Director

FINAL DATE OF ORDER **OCT 13 1998**

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF TWO YEARS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

Ord16347/BAB/9.23.98

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO. 16347

As Interim Director of the Board of Zoning Adjustment, I certify and attest that on OCT 13 1998 a copy of the order entered on that date in this matter was mailed first class postage prepaid to each person who appeared and participated in the public hearing concerning this matter, and who is listed below:

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ATTESTED: *Sheri M. Pruitt-Williams*
SHERI M. PRUITT-WILLIAMS
Interim Director

DATE: OCT 13 1998